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DIBELARDINO v. LEMMON PHARMACAL CO. : WRONGFUL DEATH ACTION FOR BREACH OF WARRANTY

The Pennsylvania Supreme Court in *DiBelardino v. Lemmon Pharmacal Co.*¹ recently held that the Pennsylvania wrongful death statute² authorized only a right of action in tort. Hence, an action in assumpsit for breach of warranty could not be brought under the statute.

This Note will examine the law of wrongful death in various jurisdictions and its relation to warranty, giving particular emphasis to the status of the law in Pennsylvania regarding death actions in warranty.

Plaintiff, in her dual capacity as widow and administratrix of her husband's estate, instituted an action in assumpsit against the drug company which sold to decedent's doctor the drug injected into the decedent's body just before his death. The complaint contained two counts. The first count was based upon the wrongful death statute³ and the second upon the survival statute.⁴ The complaint made no averment of negligence or unlawful violence, but rather relied upon a breach of implied warranty theory. The defendant filed preliminary objections which raised three issues: (a) that an action in assumpsit did not lie under the wrongful death statute, (b) that an action in assumpsit did not lie under the survival statute, and (c) that no cause of action had been pleaded since there was no averment of any privity of contract between the decedent and the drug company. The lower court sustained the first preliminary objection and dismissed the other two objections. The supreme court affirmed, holding that an action in assumpsit for breach of warranty cannot be maintained under the present wrongful death statute of Pennsylvania.

DEATH ACTIONS AND WARRANTY

At common law death actions were unknown.⁵ Moreover, the death of either the plaintiff or defendant terminated all causes of action for personal torts. Contract actions, on the other hand, survived the death of either party.⁶

1. 416 Pa. 580, 208 A.2d 283 (1965).

2. PA. STAT. ANN. tit. 12, §§ 1601, 1602 (1953).

3. PA. STAT. ANN. tit. 12, § 1601 (1953).

4. PA. STAT. ANN. tit. 20, § 320.603 (1950).

5. Whatever possibility there was that such an action might be maintained was eliminated in 1808 by Lord Ellenborough, who held that "in civil court the death of a human being could not be complained of as an injury." *Baker v. Bolton*, 1 Camp. 493, 170 Eng. Rep. 1033 (1808).

6. PROSSER, TORTS 920 (3d ed. 1964).

Legislation was enacted in England in 1833 to provide for the survival to a decedent's estate of actions he had at the time of his death.⁷ In 1846 the Fatal Accidents Act⁸ was enacted in England. This act, generally known as Lord Campbell's Act, has been the prototype for wrongful death acts in the United States. It created a new right of action on behalf of designated beneficiaries to compensate them for the pecuniary loss suffered by reason of the death of the decedent. The act permitted an action for wrongful death arising out of "a wrongful act, neglect, or default." Since contract actions survived to the decedent's personal representative while tort actions did not, it seems logical that the wrongful death statutes were intended to refer only to tort actions.⁹ Most courts agree that death statutes do not apply when the death results from a pure breach of contract.¹⁰

It is also settled that a contractual relationship between the decedent and the defendant does not prevent the action from sounding in tort.¹¹ Even though a contractual relationship existed between the decedent and the defendant, the mere fact that the complaint contains such allegations will not defeat the right of action under the death statutes. This may result because the contract imposes a duty which when breached results in a tort, such as the duty of a doctor to his patient. Under this interpretation, allegations respecting the contract are regarded as a preliminary statement showing how the defendant's obligation or duty arose.¹² This is the position taken by the Pennsylvania courts.¹³ Other courts hold that it is immaterial whether the cause of action sounds in contract or in tort. They conclude that it is unnecessary to determine this question when the statute creates a new cause of action for wrongful death, since it is sufficient if such wrongful death appears from the particular allegations.¹⁴

7. Civil Procedure Act, 1833, 3 & 4 Will. 4, c. 42.

8. 9 & 10 Vict., c. 93. Section 1 of this act provided that:

[W]hensoever the death of a person shall be caused by wrongful act, neglect, or default, and the act, neglect, or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then, and in every such case, the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the party injured, and although the death shall have been caused under such circumstances as to amount in law to a felony.

9. PROSSER, TORTS 925 (3d ed. 1964).

10. See *Willey v. Alaska Packers' Ass'n*, 9 F.2d 937 (N.D. Cal. 1925), *aff'd*, 18 F.2d 8 (9th Cir. 1927); *Revel v. Illinois Merchants' Trust Co.*, 238 Ill. App. 4 (1925), *aff'd sub nom.*, *Revel v. Butler*, 322 Ill. 337, 153 N.E. 682 (1926); *Barley's Adm'x v. Clover Splint Coal Co.*, 286 Ky. 218, 150 S.W.2d 670 (1941); *Bloss v. Dr. C.R. Woodson Sanitarium Co.*, 319 Mo. 1061, 5 S.W.2d 367 (1928).

11. *Greco v. S.S. Kresge Co.*, 277 N.Y. 26, 12 N.E.2d 557 (1938).

12. *Braun v. Riel*, 40 S.W.2d 621 (Mo. 1931).

13. *Hoehle v. Allegheny Heating Co.*, 5 Pa. Super. 21 (1897).

14. *Roche v. St. John's Riverside Hosp.*, 96 Misc. 289, 160 N.Y. Supp.

Although most courts will deny recovery for wrongful death when the plaintiff sues on the theory of contract alone, it does not necessarily follow that recovery should be denied when the theory of the action is breach of warranty, particularly implied warranty.¹⁵ Most courts, however, have failed or refused to recognize that warranty basically sounds in tort or at least has a dual character of tort and contract. They have held that wrongful death actions cannot be based upon breach of warranty. These courts reason that since there was no common law right of action for the death of another, any right to maintain such an action must be based on statute. The gist of a warranty action has become contractual. A warranty action, therefore, is not included within the wrongful death statutes¹⁶ since these statutes were intended to apply to torts only.¹⁷

Perhaps the leading case to the contrary is *Greco v. S.S. Kresge Co.*¹⁸ This was a wrongful death action based on a breach of implied warranty of fitness of food for human consumption. Plaintiff specifically disclaimed negligence on the part of the defendant. The New York death statute permitted "an action to recover damages for a wrongful act, neglect, or default, by which the decedent's death was caused."¹⁹ The *Greco* court liberally inter-

401 (Sup. Ct. 1916), *aff'd without opinion*, 176 App. Div. 885, 161 N.Y. Supp. 1143 (1916). See generally Annot., 80 A.L.R. 880 (1932).

15. Although the distinction between express and implied warranty should not be material in determining whether a death action can be maintained in warranty, it can be noted that an express warranty is more in the realm of actual contract than is implied warranty.

2 FRUMER & FRIEDMAN, PRODUCTS LIABILITY 653 n. 5 (1964).

16. PROSSER, TORTS 652 n. 95 (3d ed. 1964).

17. *Howson v. Foster Beef Co.*, 87 N.H. 200, 177 Atl. 656 (1935). Other cases in which wrongful death statutes have been construed as limiting the right of action to an *ex delicto* action include *Sterling Aluminum Prod. Inc. v. Shell Oil Co.*, 140 F.2d 801 (8th Cir. 1944) (Missouri law), *cert. denied*, 322 U.S. 761 (1944); *S. H. Kress Co. v. Lindsey*, 262 Fed. 331 (5th Cir. 1919) (Mississippi law); *Sugai v. General Motors Corp.*, 130 F. Supp. 101 (D. Idaho 1955); *Burkhardt v. Armour & Co.*, 115 Conn. 249, 161 Atl. 385 (1932); *Whiteley v. Webb's City Inc.*, 55 So.2d 730 (Fla. 1951); *Barley's Adm'r v. Clover Splint Coal Co.*, 286 Ky. 218, 150 S.W.2d 670 (1941); *Dice's Adm'r v. Zweigart's Adm'r*, 161 Ky. 646, 171 S.W. 195 (1914); *Goodwin v. Misticos*, 207 Miss. 361, 42 So.2d 397 (1949); *Hasson Grocery Co. v. Cook*, 196 Miss. 452, 17 So.2d 791 (1944); *Bloss v. Dr. C. R. Woodson Sanitarium Co.*, 319 Mo. 1061, 5 S.W.2d 367 (1928); *Wadleigh v. Howson*, 88 N.H. 365, 189 Atl. 865 (1937); *Goelz v. J. K. & Suzie L. Wadley Research Institute & Blood Bank*, 350 S.W.2d 573 (Tex. Civ. App. 1961).

18. 277 N.Y. 26, 12 N.E.2d 557 (1938). Other jurisdictions have permitted an action for wrongful death in warranty: *B.F. Goodrich Co. v. Hammond*, 269 F.2d 501 (10th Cir. 1959) (Kansas law); *Ewing v. Lockheed Aircraft Corp.*, 202 F. Supp. 216 (D. Minn. 1962) (Indiana law); *Hinton v. Republic Aviation Corp.*, 180 F. Supp. 31 (S.D. N.Y. 1959) (California law); *Greenwood v. John R. Thompson Co.*, 213 Ill. App. 371 (1919); *Parks v. G. C. Yost Pie Co.*, 93 Kan. 334, 144 Pac. 202 (1914); *Schuler v. Union News Co.*, 295 Mass. 350, 4 N.E.2d 465 (1936).

19. N.Y. DECED. EST. LAW § 130.

preted the wrongful death statute holding that:

Violation of a duty owing to another is a wrongful act; breach of a contract involving violation of a duty may likewise be a wrongful act. . . . Though the action may be brought solely for the breach of implied warranty, the breach is a wrongful act, a default, and, in its essential nature, a tort. . . . The purchaser could recover, if living, because of the injury she received through the 'wrongful act' or 'default' of the seller based on the breach of the implied warranty that the food was fit for human consumption. . . . Under the common law, a person injured through a breach of duty imposed upon another, might, in his or her lifetime, recover for such injury, but death put an end to liability of the person responsible for such breach. The statute was enacted to remedy partially that evil, not to perpetuate it by leaving the statute open to narrow construction.²⁰

In wrongful death cases the American courts generally proceed on the theory that there can be no recovery apart from statute.²¹ The English courts, on the other hand, have held to the contrary. In *Jackson v. Watson & Sons*,²² a husband-purchaser recovered from the seller for his damages resulting from the injury and death of his wife caused by her having eaten unwholesome food. The court held that when a cause of action exists independent of the wrong causing death, such as a breach of contract, the death is not an essential part of the cause of action but is only an element in ascertaining the damages.²³

The wrongful death statute in Pennsylvania, which is not typical of American death statutes, provides:

Whenever death shall be occasioned by unlawful violence or negligence, and no suit for damages be brought by the party injured during his or her life, the widow of any such deceased, or if there be no widow, the personal representatives may maintain an action for and recover damages for the death thus occasioned.²⁴

20. 277 N.Y. at 34-35.

21. On the subject of death actions in warranty see 2 FRUMER & FRIEDMAN, *PRODUCTS LIABILITY* § 42 (1964); 2 HARPER & JAMES, *TORTS* §§ 24.3, 28.21 (1956); PROSSER, *TORTS* §§ 95, 121 (3d ed. 1964); Note, 38 VA. L. REV. 674 (1952); Comment, 5 U. FLA. L. REV. 344 (1952); Note, 3 U. PITT. L. REV. 362 (1937). See generally Annot., 86 A.L.R.2d 316 (1962); Annot., 115 A.L.R. 1026 (1938).

22. [1909] 2 K.B. 193.

23. See 23 HALSBURY, *LAW OF ENGLAND* § 976 (2d ed. 1936) wherein it is stated:

An action may also be maintained apart from statutory provisions, where there is a cause of action independently [sic] of the wrong causing the death, such as a breach of contract, and damage arising from the death may be included as an element of the damage.

24. PA. STAT. ANN. tit. 12, § 1601 (1953). Compare the statutory language in the Pennsylvania death act with that utilized in the English statute, *supra* note 8, upon which most of the American death acts were modeled.

The *DiBelardino* court held that the language of this statute restricts the right of action therein provided to an action in tort and that an action in assumpsit is inappropriate.²⁵

The New York statute is broader than the Pennsylvania statute and leaves more room for interpretation. The *Greco* court construed the New York statute as allowing a wrongful death action for breach of warranty. New York is one of twenty-seven states²⁶ which utilized the "wrongful act, neglect, or default" language of the original English death statute in enacting its wrongful death act. In *Zostautas v. St. Anthony De Padua Hosp.*²⁷ the Illinois Supreme Court construed its similarly worded statute as encompassing a breach of a physician's contract resulting in the patient's death. The New Jersey statute is also modeled after the English act. In *Skovgaard v. The Vessel M/V The Tungus*²⁸ a federal district court held that under that statute "conduct required to impose liability . . . is not limited to that conduct embraced in the historical concept of negligence."²⁹

The Florida court, on the other hand, in a case subsequent to the *Greco* case, narrowly construed a statute almost identical to the New York statute as not including an action based on a breach of implied warranty.³⁰ The Florida legislature, in apparent displeasure with this decision, subsequently amended the death statute to provide that the right of action "shall extend to and include actions ex contractu and ex delicto."³¹

Sixteen states permit an action for death caused by "wrongful act or neglect" or "wrongful act or omission" or have similarly phrased statutes.³² Such statutes have been interpreted to in-

25. See 11 STANDARD PA. PRACTICE §§ 11 & 12 (1964).

26. ARIZ. REV. STAT. ANN. § 12-611 (1956); ARK. STAT. ANN. § 27-906 (1962); COLO. REV. STAT. ANN. § 41-1-2 (1963); FLA. STAT. § 768.01 (1961); HAWAII REV. LAWS § 246-2 (1955); ILL. REV. STAT. ch. 70, § 1 (1963); ME. REV. STAT. ANN. tit. 18, § 2551 (1964); MD. ANN. CODE art. 67, § 2 (1957); MICH. COMP. LAWS § 600.2922 (1948); MO. REV. STAT. § 537.080 (1949); NEB. REV. STAT. § 30-809 (1964); N.J. REV. STAT. § 2A:31-1 (1952); N.M. STAT. ANN. § 22-20-1 (1953); N.Y. DECED. EST. LAW § 130; N.C. GEN. STAT. § 28-173 (1950); N.D. CENT. CODE § 32-21-01 (1960); OHIO REV. CODE ANN. § 2125.01 (1964); R.I. GEN. LAWS ANN. § 10-7-1 (1956); S.C. CODE ANN. § 10-1951 (1962); S.D. CODE § 37.2201 (Supp. 1960); TEX. REV. CIV. STAT. ANN. art. 4761 (1952); VT. STAT. ANN. tit. 14, § 1491 (1958); VA. CODE ANN. § 8-633 (1957); WASH. REV. CODE § 4.20.010 (1962); W. VA. CODE ANN. § 5474 (1961); WIS. STAT. § 331.03 (1961); WYO. STAT. ANN. § 1-1065 (1957).

27. 23 Ill. 2d 326, 178 N.E.2d 303 (1961).

28. 252 F.2d 14 (3d Cir. 1957).

29. *Id.* at 17.

30. *Whiteley v. Webb's City Inc.*, 55 So.2d 730 (Fla. 1951).

31. FLA. STAT. § 768.01 (1961).

32. ALA. CODE tit. 7, § 123 (1958); ALASKA STAT. § 13.20.340 (1964); CAL. CIV. PROC. CODE § 377; IDAHO CODE ANN. § 5-311 (1948); IND. ANN. STAT. § 2-404 (1946); IOWA CODE § 613.15 (1962); KAN. GEN. STAT. ANN. § 60-1901 (1964); KY. REV. STAT. § 411.130 (1963); MINN. STAT. § 573.02 (1961); MISS. CODE ANN. § 1453 (1956); MONT. REV. CODES ANN. § 93-2810 (1964); NEV. REV. STAT. § 12.090 (1963); OKLA. STAT. tit. 12, § 1053 (1961);

clude a wrongful death action in warranty.³³ Mississippi, whose death statute allows recovery for death caused by "wrongful or negligent act or omission," spells out the warranty theory by establishing an action when death is caused "by the breach of any warranty, express or implied, of the purity or fitness of any foods, drugs, medicines, beverages, tobacco, or any and all other articles or commodities intended for human consumption. . . ."³⁴

Pennsylvania and Delaware are the only states whose death statutes restrict the action to a death caused by "unlawful violence or negligence."³⁵ The highest court of Delaware has yet to consider the issue which Pennsylvania decided in *DiBelardino*.

The remaining five states display diverse approaches to the wording of their death statutes. Under the original Connecticut statute, providing recovery when death was caused by "negligence of the defendant or by his willful, malicious or felonious act," death was held not an allowable element of damages in an action for breach of implied warranty of fitness of food for human consumption.³⁶ The statute was subsequently amended, however, to permit recovery for death "from the party legally at fault."³⁷

Georgia permits recovery for homicide of husband or parent and defines "homicide" as including "all cases where the death of a human being results from a crime or from criminal or other negligence."³⁸ Louisiana provides that a person shall be responsible for "every act . . . that causes damage to another."³⁹ The Massachusetts statute allows recovery for death caused by "negligence . . . or by . . . willful, wanton or reckless act."⁴⁰

The death statute in New Hampshire is singular. It provides for an "action of *tort* for physical injuries."⁴¹ In *Howson v. Foster Beef Co.*⁴² the court held that the statute did not permit a death action based on a breach of implied warranty theory. The court noted that warranty in New Hampshire was regarded as a contract, and, since the statute was limited to tort actions, the provisions of the statute were not available to the plaintiff. It would appear that the *Howson* court failed to recognize the dual nature of warranty when it held that it was purely contractual. It should be noted that the law imposes an implied warranty that a product is of

ORE. REV. STAT. § 30.020 (1963); TENN. CODE ANN. § 20-607 (1955); UTAH CODE ANN. § 78-11-7 (1953).

33. *B. F. Goodrich Co. v. Hammond*, 269 F.2d 501 (10th Cir. 1959); *Hinton v. Republic Aviation Corp.*, 180 F. Supp. 31 (S.D.N.Y. 1959).

34. MISS. CODE ANN. § 1453 (1956).

35. PA. STAT. ANN. tit. 12, § 1601 (1953); DEL. CODE ANN. tit. 10, § 3704(b) (1953).

36. *Burkhardt v. Armour & Co.*, 115 Conn. 249, 161 Atl. 385 (1932).

37. CONN. GEN. STAT. REV. § 52-555 (1958).

38. GA. CODE ANN. §§ 105-1301-02 (1956).

39. LA. CIVIL CODE ANN. art. 2315 (West 1952).

40. MASS. GEN. LAWS ANN. Ch. 229, § 2 (Supp. 1965).

41. N.H. REV. STAT. ANN. § 556:9 (1955).

42. 87 N.H. 200, 177 Atl. 656 (1935).

merchantable quality⁴³ or fit for the purpose for which it is sold.⁴⁴ Since tort liability arises from a breach of a duty imposed by law, as opposed to contract liability which is based on an agreement between the contracting parties, the tort nature of implied warranty becomes apparent. The *Howson* case was decided thirty years ago. Should the question arise today, there is room within the wording of the statute for a more liberal construction.

Although the New Hampshire statute restricts the action to an action in tort, at least the court is free to construe a breach of implied warranty as a tort and allow the maintenance of the action should it choose to do so. The Pennsylvania statute, on the other hand, leaves no room for such an interpretation. This statute permits the action only when the death is caused by "unlawful violence or negligence." A death caused by a breach of warranty does not fit within the scope of the statute. It would appear that due to the peculiar wording of the wrongful death statute, the *DiBelardino* court had no choice but to sustain defendant's objection that an action in assumpsit did not lie under the wrongful death statute.

The *DiBelardino* dissent stated that the majority took an "unduly restricted view" of the Pennsylvania wrongful death statute. Relying on *Greco*, it said that "unlawful violence or negligence" could be interpreted as encompassing a death caused by an unsafe drug. The New York statute, however, is so different from Pennsylvania's that any analogy would be untenable, except perhaps that such construction should be afforded the statute, if possible. The dissent also pointed out that since the statute is remedial in nature it should be liberally construed. This should not mean, according to the majority, that the court is free to allow under the statute actions which the statute plainly does not contemplate:

We are fully aware that the 1851 statute . . . is remedial in nature and thus subject to a liberal construction. However, that does not mean that we must, by construction, extend such statute to include a right of action so obviously not within the legislative intent as revealed by the statutory language. The cause of action under the statute rests upon "unlawful violence or negligence"; by the employment of such terms, the legislature intended the right of action under the statute to be redressed in a tort and not in an assumpsit action.⁴⁵

The dissent said that the court should grant the statute a meaning which would implement its intended effect. The legislative intent, however, seems to be to restrict the action to one of tort, and not just any tort but specifically "unlawful violence or negligence." This is so because the legislature, in enacting the statute, chose to depart from the language of the English act which was utilized by so many of the other states.

43. UNIFORM COMMERCIAL CODE § 2-314.

44. UNIFORM COMMERCIAL CODE § 2-315.

45. 416 Pa. at 585.

In *Van Beeck v. Sabine Towing Co.*⁴⁶ the Court noted that death statutes were the result of dissatisfaction with archaisms of the law. Hence, it would be unfortunate "if a narrow or grudging process of construction were to . . . perpetuate the very evils to be remedied."⁴⁷

The *DiBelardino* case presented a narrow question of statutory construction: "Is a death caused by a breach of warranty one which may fairly be said to have been caused by unlawful violence or negligence?"⁴⁸ The complaint made no averment of either negligence or unlawful violence on the part of the defendant. Plaintiff had to choose between two distinct types of actions: trespass based upon Lemmon's negligence, if any, or assumpsit for breach of warranty, which gives rise to strict liability and does not depend upon any negligence or knowledge of defects on the part of the seller. Plaintiff rested her case on the warranty theory. The Pennsylvania wrongful death statute does not contain the "wrongful act, neglect, or default" language utilized by the original English statute. It merely creates a cause of action in favor of survivors of decedents whose deaths were occasioned by "unlawful violence or negligence." These words suggest liability based on fault. They are not descriptive of liability without fault, upon which actions for breach of warranty are based. It seems apparent that wrongful death actions in Pennsylvania are limited to actions in trespass. Had the legislature provided in the statute for a cause of action based upon a death occasioned by a default, the *DiBelardino* court could have construed it to include a non-negligent breach of contract and therefore could properly have held that plaintiff's action was available in assumpsit. This was the approach utilized in *Greco*.

It is interesting to note the anomaly which results from a rule which states that in a wrongful death action in trespass, recovery must be denied unless unlawful violence or negligence can be proved. Assuming the drug had been negligently adulterated by Lemmon, the action would have been available independent of the breach of warranty and not because of it. The act requires negligence and this would have been present. The fact that the negligent conduct resulted in a breach of warranty would have been of no consequence.⁴⁹

CONCLUSION

The result of the *DiBelardino* decision is that a wrongful death action cannot be brought on a breach of warranty theory in Pennsylvania. The court's interpretation of the wrongful death statute lays to rest the uncertainty resulting from opposing lower

46. 300 U.S. 342 (1937).

47. *Id.* at 350-51.

48. Brief for Appellee, *Wilson & Co.*, p. 5, *DiBelardino v. Lemmon Pharmacal Co.*, 416 Pa. 580, 208 A.2d 283 (1965).

49. *Id.* at 13. See *Catani v. Swift & Co.*, 251 Pa. 52, 95 Atl. 931 (1915).

court decisions.⁵⁰ The case illustrates, however, the defect in the wrongful death statute of Pennsylvania. It is not reasonable to create a cause of action for the survivors of those decedents whose deaths were occasioned by unlawful violence or negligence and not to establish a remedy for the survivors of decedents whose deaths were the result of a breach of warranty. The loss is just as great regardless of the cause of the death.

Any broadening of the rights of these survivors may be done only by the legislature. Pennsylvania is one of a minority of states whose death statutes will not permit recovery in a death action in warranty. There are presently two bills before the legislature which would eliminate the inequity of the present law.⁵¹ These bills, which are virtually identical, would amend the Act of May 13, 1927⁵² to permit recovery of damages in actions for death *caused by a breach of an express or implied warranty*. Such an amendment would allow survivors of decedents whose deaths were caused by a breach of warranty the same right to recovery available to survivors of decedents whose deaths were caused by "unlawful violence or negligence." This legislation should be enacted without delay in order that recovery need not again be denied in any future cases of this nature.

EDWARD P. NAJARIAN

50. *Berkbile v. Brantley Helicopter Corp.*, 35 D. & C.2d 124 (C.P. No. 4 Phila. Co. 1964); *Simone v. John J. Felin & Co.* (No. 2), 35 D. & C. 687 (C.P. No. 6 Phila. Co. 1939). See also *Barnard v. Pennsylvania Range Boiler Co.*, 32 F.R.D. 58 (E.D. Pa. 1962); *Sacks v. Creasy*, 211 F. Supp. 859 (E.D. Pa. 1962); *Frankel v. Styer*, 201 F. Supp. 726 (E.D. Pa. 1962).

51. H.B. 547, General Assembly of Pennsylvania, Session of 1965; H.B. 1271, General Assembly of Pennsylvania, Session of 1965.

52. PA. STAT. ANN. tit. 12, § 1604 (1953).